

**Minnesota Public Utilities Commission**  
***Staff Briefing Papers***

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Meeting Date: **August 14, 2012** ..... **Agenda Item # 5**

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Company: Northern States Power Company d/b/a Xcel Energy and Great River Energy

Docket No. E002/TL-12-401

In the Matter of the Application of Xcel Energy and Great River Energy for a Route Permit for the Upgrade of the Southwest Twin Cities (SWTC) Chaska Area 69 kV Transmission line to 115 kV Capacity (Chaska Project)

Issue(s): Should the Commission accept the route permit application as complete? Should the Commission refer the matter to the Office of Administrative Hearings? Should the Commission appoint a Public Advisor? Should the Commission establish an advisory task force?

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**Relevant Documents**

Xcel Energy – Initial Filing (Filing Letter and Route Permit Application) .....July 11, 2012

DOC EFP – Comments and Recommendation .....July 25, 2012

The attached materials are workpapers of the Commission Staff. They are intended for use by the Public Utilities Commission and are based upon information already in the record unless otherwise noted.

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***Statement of the Issue***

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Should the Commission accept the route permit application as complete? Should the Commission refer the matter to the Office of Administrative Hearings? Should the Commission appoint a Public Advisor? Should the Commission establish an advisory task force?

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***Project Overview***

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The proposed Project involves upgrading approximately 6.1 miles of existing single circuit 69 kV transmission line to a single circuit 115 kV transmission line; changing the operating voltage of approximately 2.9 miles of existing Great River Energy 69 kV transmission line to operate at 115 kV; construction of two segments of new 115 kV single circuit transmission line totaling 2.4 miles; abandonment in place approximately 1.0 mile of existing 69 kV transmission line; and removing 0.39 miles of existing 69 kV transmission line through the central portion of the City of Chaska. The Project extends through Dahlgren, Laketown, Carver, and Jackson townships, and the city of Chaska.

Xcel Energy and Great River Energy anticipate a spring 2014 in-service date and construction is anticipated to begin soon after permits are obtained.

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***Procedural History***

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On April 23, 2012 the Applicants submitted a Notice of Intent to file a route permit application pursuant to Minnesota Rule 7850.2800, subpart 2.

On May 15, 2012 the Applicants submitted a Certificate of Need (CN) with the Commission.

On July 11, 2012 Xcel Energy submitted an application for a route permit for the Upgrade of the Southwest Twin Cities Chaska 69kV Transmission Line to 115 kV Capacity (Chaska Project) following the alternative permitting procedures outline in Minnesota Rules 7850.2800 to 7850.3900.

On July 25, 2012, the Minnesota Department of Commerce, Energy Facilities Permitting Unit (DOC EFP) submitted comments and recommendations on the application acceptance, appointment of a public advisor and establishment of an Advisory Task Force.

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***Statutes and Rules***

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Minnesota Statute § 216E.03, subd. 2 states that no person may construct a high voltage transmission line without a Route Permit from the Commission. A High Voltage Transmission Line (HVTL) is defined as a transmission line of 100 kV or more and greater than 1,500 feet in length in Minnesota Statute §216E.01, subd. 4. The proposed transmission lines are HVTLs and therefore a Route Permit is required prior to construction. The Application was submitted pursuant to the provisions of the Alternative Permitting Process outlined in Minnesota Rules 7850.2800 to 7850.3900.

Minnesota Statute §216B.243, subd. 2 states that no Large Energy Facility shall be sited or constructed in Minnesota without issuance of a Certificate of Need by the Commission. The 115 kV single-circuit transmission line proposed for the Chaska Project is a “large energy facility” because it has a capacity in excess of 100 kV and is cumulatively more than 10 miles long. A concurrent Certificate of Need application is being processed under Commission Docket CN-11-826.

The provisions for the alternative permitting process review are contained in Minnesota Rules 7850.2800 to 7850.3900. Minnesota Rule 7850.3200 provides that the Commission may accept an application as complete, reject an application and require additional information to be submitted, or accept an application as complete upon filing of supplemental information.

The proposed project qualifies for review under the alternative permitting process authorized by Minnesota Statute § 216E.04, subd. 2(3) and Minn. Rule 7850.2800, subp. 1(C) because the proposed HVTL is between 100 and 200 kV. Under this rule, the Applicant can elect to follow the procedures under Minn. Rule 7850.2800 to 7850.3900 rather than the procedures for a full process under Minnesota Rules 7850.1700 to 7850.2700. The Applicants have chosen to follow the alternative permitting process.

Minnesota Rule 7850.1300 identifies the application information requirements for route permit applications including, but not limited to, applicant information, route description, environmental impacts, alternatives, and mitigation measures. Minnesota Rule 7850.3200 provides that the Commission may accept an application as complete, reject an application and require additional information to be submitted, or accept an application as complete upon filing of supplemental information.

Minnesota Rule 7829.1000 provides that if a proceeding involves contested material facts and there is a right to a hearing under statute or rule, or if the commission finds that all significant issues have not been resolved to its satisfaction, the commission shall refer the matter to the Office of Administrative Hearings (OAH) for contested case proceedings, unless: all parties waive their rights to contested case proceedings and instead request informal or expedited proceedings, and the commission finds that informal or expedited proceedings would be in the public interest; or, a different procedural treatment is required by statute.

Minnesota Rule 7850.2200 states that the Commission shall designate a public advisor upon acceptance of application for a route permit.

Minn. Rule 7849.1900, Subpart 1, provides that in the event an applicant for a HVTL certificate of need applies to the Commission for a route permit prior to the time the Department completes the environmental report, the Department may elect to prepare an Environmental Assessment in lieu of the required environmental report.

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### ***Department of Commerce Comments***

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The DOC EFP conducted a completeness review of the route permit application. The DOC EFP concluded that the application meets the content requirements of Minn. Rules, part 7850.3100, is substantially complete and recommended that the Commission accept the Application as complete. Further the DOC EFP recommended: 1) the Commission request the Office of Administrative Hearings (OAH) assign an Administrative Law Judge (ALJ) to preside over the public hearing and submit a report setting forth findings, conclusions, and recommendations on the merits of the proposed transmission line upgrade and any associated issues, 2) appoint a public advisor, and 3) find that based on the record, an advisory task force is not warranted at this time. Acceptance of the application will initiate the environmental review process. The Department suggests that process efficiencies may be gained by coordinating the environmental review of the corresponding certificate of need docket for the project.

In assessing the merits of establishing an Advisory Task Force for the project, the Department EFP staff considered the project's size, complexity, known or anticipated controversy and sensitive resources. Upon conclusion of its analysis, the Department concluded that, based on the existing record, an Advisory

Task Force is not warranted. In the event the Commission chooses to employ an advisory task force, the Department has created and included a proposed structure and charge.

The permitting process should provide adequate opportunities for the public to identify issues and route alternatives to be addressed in the environmental assessment. DOC EFP indicated that their staff can also assist local landowners and governmental units in understanding the siting and routing process and identifying opportunities for participating in further development of alternative routes or permit conditions.

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### ***Staff Discussion***

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Under Minnesota Rule 7850.3200, the Commission may accept an application as complete, reject an application and require additional information to be submitted, or accept an application as complete upon the filing of supplemental information.

Generally, staff agrees with the Department's Comments and Recommendations on application completeness and on prudence of an advisory task force. Staff has further comments regarding the referral to the OAH for a summary proceeding, the assignment of a public advisor, and Commission input regarding project alternatives, as discussed below.

#### *1. Referral to OAH*

The Commission recently has requested a more thorough approach to the processing of energy facility siting cases. Staff believes that the record would benefit from the thorough evaluation that an ALJ can provide. Staff recommends that the Commission refer the matter to the OAH under the alternative hearing process set forth in Minn. Stat. 7850.3800; the issue to be addressed is whether the proposed project meets the selection criteria established in Minn. Stat. 216E.03, subd. 7, and Minn. Rules Chapter 7850.

Further staff recommends that the Commission request the ALJ to adapt to the existing procedural framework set forth in Minn. Rule 7850.3800 to include the following features, which will facilitate comprehensive factual development and informed decision-making:

1. The ALJ assigned to this matter emphasizes the statutory time frame for the Commission to make final decisions on applications and the ALJ strongly encourage the Applicant and others to adhere to a schedule that conforms to the statutory timeframe.
2. The Commission directs Commission staff to formally contact relevant state agencies, and request their participation in the development of the record and public hearings under Minn. Stat. § 216E.10, subp. 3.
3. Throughout the course of the proceedings, the Commission asks that the Administrative Law Judge ask the parties, participants, and the public to address whether the proposed project meets the selection criteria established in Minn. Stat. § 216E.03, subd. 7 and Minn. Rules Chapter 7850.
4. The Commission requests that the DOC EFP submit any post-hearing comments on the merits of the application and the record, as well as any recommendation(s), draft permit language, or specific permit provisions, under timelines established by the Office of Administrative Hearing. In the event the Department chooses to submit additional comments and those comments in part choose in and among competing alternatives, the DOC EFP shall identify the competing alternatives and clearly indicate why it made those choices.
5. The Commission requests the Administrative Law Judge to prepare a report setting forth findings, conclusions, and recommendations on the merits of the transmission line upgrade project, applying the routing criteria set forth in statute and rule.

## *2. Public Advisor*

Based on recent Commission action in similar cases, staff recommends Commission staff member Michael Kaluzniak be assigned as the Public Advisor in this matter.

## *3. Route Alternatives*

Also, staff proposes to establish an additional process step regarding the alternatives to be considered in the environmental document and at the time of public and evidentiary hearings. Staff recommends the Commission request the Department present the route alternatives identified during the in the scoping process so that it may provide input to the DOC Commissioner in the Final Scoping Decision on the Project. Staff believes this is an appropriate step to recognize and facilitate the Commission's role under Minn. Stat. §216E.03 Subd. 5.

The commissioner shall study and evaluate any site or route proposed by an applicant and any other site or route the commission deems necessary that was proposed in a manner consistent with rules concerning the form, content, and timeliness of proposals for alternate sites or routes.

## ***Commission Decision Alternatives***

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### A. Determination of Completeness

1. Accept the application as complete.
2. Reject the application and specify the information necessary to address the deficiencies.
3. Take some other action.

### B. Referral to the Office of Administrative Hearings

1. Send the matter to the OAH for a summary proceeding, requesting in the referral order that the OAH adapt the existing procedural framework to incorporate the items outlined above.
2. Take some other action.

### C. Route Alternatives

1. Request that the DOC EFP present draft route alternatives to the Commission in order for the Commission to provide input to the DOC Commissioner prior to the Final Scoping Decision.
2. Take some other action.

### D. Public Advisor

1. Authorize DOC EFP staff to name a public advisor.
2. Appoint Michael Kaluzniak, of the Commission staff, as public advisor.
3. Take some other action.

### E. Advisory Task Force

1. Authorize DOC EFP staff to establish an advisory task force and develop a proposed structure and charge.
2. Take no action on an advisory task force at this time.

## ***Staff Recommendation***

Staff recommends A1, B1, C1, D2 and E2.